

Memorandum

To : Honorable John Chiang, Chair
Honorable, Claude Parrish, Vice Chairman
Honorable Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date : August 26, 2005

From : Kristine Cazadd
Chief Counsel *K Cazadd*

Subject : Relief of Amnesty Interest Penalties

We write this memorandum to ask the Board for specific authorization for staff to consider and act on requests for relief of the amnesty interest penalty before the penalty is actually imposed.

The amnesty interest penalty is 50 percent of the interest accrued as of March 31, 2005, on the amnesty-eligible tax due as of that date. (Rev. & Tax. Code, § 7074, subd. (a).) The penalty is imposed on taxpayers with amnesty-eligible liabilities not paid by March 31, 2005, unless the taxpayer: 1) applied for amnesty by March 31, 2005; *and* 2) by May 31, 2005, either paid the amnesty-eligible tax and interest due, or entered into a qualifying installment payment agreement. This means that as of May 31, 2005, we had all the information required to determine whether the amnesty interest penalty applies in almost all cases.¹

The amnesty interest penalty is imposed only on final liabilities. As relevant here, this means that when an amnesty interest penalty is applicable in a late protest, the penalty has already been imposed because a late protest is an appeal of a final liability. When an amnesty interest penalty is applicable in a timely petition for redetermination, the penalty has *not* been imposed at the time of the appeal, and will not be imposed until after any Appeals conference and after any Board hearing, when the matter goes final 30 days after the redetermination is issued.

As part of the adoption of the amnesty program, the Legislature amended Revenue and Taxation Code section 6592 to add penalties imposed under the amnesty provisions to those for which the Board may grant relief. Since petitioned liabilities are not yet final, the amnesty interest penalty is not actually imposed at the time the Appeals Division holds the Appeals

¹ An exception is where the Board later applies a credit against the amnesty-eligible liability. That reduction would be treated as if it was the result of a payment made on the date on which the payment resulting in that credit had been made. Thus, if a payment made on March 15, 2005, resulted in an unapplied credit that was applied in June 2005 to an amnesty-eligible liability, that payment would be treated as having reduced the tax due before March 31, 2005, reducing the measure of the amnesty interest penalty accordingly.

conference or issues the Decision and Recommendation. Since the Appeals Division would be recommending that relief of a penalty be granted or denied before the penalty is actually imposed, we are asking for specific direction as to whether the Board wishes the Appeals Division to consider such requests for relief. We recommend that the Board authorize the Appeals Division to do so.

Except for the fact that the penalty is not actually imposed at the time the appeal of a timely petition is heard, the circumstances related to considering a request for relief of the amnesty interest penalty in a late protest and in a timely petition for redetermination are essentially the same. With the exception of actual payment of the tax and interest due, in both types of appeals all bases for relieving the penalty should be known at the time the request for relief is considered by the Appeals Division.

Actual payment of tax and interest due must, of course, be an important factor in granting relief of the penalty because the specific goal of the amnesty program was to cause taxpayers to pay taxes due, and the penalty is imposed because of the taxpayer's failure to do so. Therefore, if the Appeals Division were to conclude that the circumstances *otherwise* justified relief of the penalty, it would condition its recommendation for relief as on the taxpayer's making full payment of all amnesty-eligible tax due, plus accrued interest, within 30 days after the mailing of the notice of redetermination (i.e., before it goes final). For cases decided by the Appeals Division in the next several months where this alternative could be of some benefit to the taxpayer, an alternative condition may be offered that the taxpayer enter into an installment plan, within 30 days after the mailing of notice of redetermination, to pay all amnesty-eligible tax plus accrued interest no later than June 30, 2006, and then successfully complete the terms of the agreement.

Even where the Appeals Division recommends relief of the amnesty interest penalty in a timely petition, the penalty will *still* legally be imposed when the liability becomes final. Where relief is conditionally granted and the amnesty-eligible tax, and accrued interest, is paid before the finality date, the penalty would be deleted after being legally imposed. Where relief is conditionally granted and the taxpayer enters into an installment agreement in accordance with the recommendation for relief, the penalty would remain unless, and until, the taxpayer successfully completes the terms of the installment agreement.

When the Board hears a petition and the taxpayer requests relief of the amnesty interest penalty (that has not yet been imposed), we recommend that the Board also consider and rule on that request. In such cases, and in late protests heard by the Board which include a request for relief of the amnesty interest penalty, we further recommend that the Board consider imposing the same conditions as to payment of the amnesty-eligible liability discussed above. Furthermore, we recommend that the Board authorize the Sales and Use Tax Department to follow the same procedures and consider requests made in connection with timely petitions (e.g., in cases where no Appeals conference or Board hearing has been requested), applying the same conditions.

The contact person for this matter is Tax Counsel IV David H. Levine at (916) 324-2192.

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